

FROM PAGE TO PRACTICE: AN INTRODUCTION

On March 6, 2009, the *N.Y.U. Review of Law & Social Change* commemorated its fortieth anniversary. The celebration, which brought together approximately 150 current members and alumnae from all four decades of the journal's history, happened somewhat by chance. None of the journal's 2008-09 leadership knew of *Social Change's* upcoming birthday until we were tipped off by the editor-in-chief of another N.Y.U. journal that had been founded in the same year. Not surprisingly for an organization whose members are often more occupied with challenging the status quo than self-promotion or self-congratulation, *Social Change* has limited records detailing its creation, history, and activities, aside from the publication itself. Though well-trained in their journal-related duties, new generations of *Social Changers* have inherited their responsibilities without much sense of the legacy preceding them. And yet—as was reiterated again and again as we spoke and exchanged emails with *Social Change* alumnae prior to the anniversary celebration—*Social Change* has a long history of serving as more than simply a vehicle for publishing legal scholarship. Whether initially attracted by the off-beat office space (which feels like the most welcoming place on campus for many progressive students), by the cutting-edge ideas published in *Social Change's* pages, or simply by recommendations from upper-class students, four decades of *Social Changers* have found and fostered a community of like-minded people seeking to advance social justice through their writing, advocacy, and activism.

We decided *Social Change* was due for an anniversary bash that would celebrate our publication and reconnect our community. We embarked on multiple archival projects to learn about *Social Change's* rich history, collecting information from forty years of mastheads, colloquia programs, and alumnae. We spoke with Gary Flack '71, editor-in-chief of the very first volume of “the Review”—as earlier classes referred to *Social Change*—who shared some of the journal's earliest history. As Gary explained to us, *Social Change* began in 1968-69 as a discussion group of students who were interested in legal careers serving underrepresented populations. These students were critical of existing “elitist” law reviews and frustrated by the lack of analysis of the issues that topped the progressive legal agenda in the late 1960s. Having grappled with how best to organize themselves and present their views, these students decided their first project would be a legal analysis of why urban elementary and

secondary education was failing. They framed this critique against the backdrop of New York City Mayor John Lindsay's campaign to decentralize oversight of public education. The project proved unwieldy, requiring specialized knowledge of complicated bodies of law and raising complex issues regarding the relationship between law and social policy. Not unlike their successors in years to come, the earliest *Social Changers* were concerned about environmental destruction. They decided to forego publishing this initial study because they did not feel confident that its quality was high enough to justify cutting down the trees necessary to print its content. It was not until the following year that they reached this goal; they decided to publish their first issue—a thin volume containing student analyses of recent Supreme Court welfare law jurisprudence, issues surrounding legal aid and the right to effective counsel, and reform efforts to address the problem of retaliatory eviction. A new tradition was born.

N.Y.U.'s administration challenged *Social Change's* first leaders to prove that N.Y.U. needed a critical journal and that the endeavor was worthy of institutional support. Peter Gold '71, a member of *Social Change's* inaugural editorial staff, recalls going before the N.Y.U. faculty to argue for funding and accreditation. He also remembers, after successfully winning approval, approaching Norman Dorsen to convince him to be *Social Change's* first faculty advisor. Dorsen, who later became the president of the ACLU and Society of American Law Teachers, was, even then, a veteran advocate for civil rights and was adored by many progressive students.

The first several volumes of *Social Change* featured student scholarship and followed a somewhat erratic publication schedule. Jane Stewart, who was co-editor-in-chief in 1978-79, remembers being called into Dean Norman Redlich's office for a meeting in which the Dean announced that he intended to close the journal if it failed to improve in quality and consistency. In response, and with the Dean's encouragement, that year's class organized the first *Social Change* colloquium, "Obscenity: Degradation of Women Versus Right of Free Speech." Held in December 1978, the event attracted some of the leading thinkers on the issue of pornography from both civil libertarian and feminist camps—including Andrea Dworkin, Susan Brownmiller, and Phyllis Chesler—and earned itself full coverage in the *New York Times*.¹ This was the first of many *Social Change*-sponsored colloquia and symposia, over twenty-five of which have produced freestanding issues of scholarship by their participants. These many events reflect a desire to air and debate new ideas in search of solutions to society's most vexing problems. A cynical observer might glance at a list of *Social Change's* colloquia and symposia

1. Judy Klemesrud, *Women, Pornography, Free Speech: A Fierce Debate at N.Y.U.*, N.Y. TIMES, Dec. 4, 1978, at D10.

topics and feel discouraged that we are facing the same issues today as we have for the last four decades. But a list which includes topics such as immigrant labor rights, indigent criminal defense, prison overcrowding, gay and lesbian rights, welfare reform, censorship, and social justice movement-building highlights the extent to which *Social Change* has been at the forefront of cutting-edge legal thinking over the years. These events have provided a valuable forum for scholarly inquiry and critical discussion, drawing attention to challenging new ideas that were often neglected in other fora.

Excited by the opportunity to recover *Social Change*'s history as a vehicle for promoting progressive legal thinking, we enlisted the journal's staff to help us dig into the archives and explore what exactly our community has been printing all these years. We found many familiar names: our own professors, writing at earlier stages in their careers; other scholars whose work appears in our casebooks or whose arguments we have relied on in our own research; prominent social justice lawyers who run organizations at which we aspire to work; and movement leaders whose visions for a more just world have inspired us to study law. We also found (with a little help from Google) that many *Social Change* alumnae and authors are continuing to advance progressive legal thought and reform as professors at law schools across the country; as government officials in prominent positions in the Obama administration; and as founders, directors, and staff in amazing nonprofit organizations. Efforts to identify and categorize subject areas that made frequent appearances in *Social Change* soon proved futile, due not only to the breadth of topics covered in the pages of the journal, but also to the nuance and analytical sophistication *Social Change* had developed over the years. Although we were proud to find *Social Change* articles that seemed to be particularly influential—judging from the rates at which they were cited in other articles, briefs, and court decisions—it did not take us long to conclude that Westlaw citing statistics could only tell a small part of the story.

Throughout our year as part of *Social Change*'s leadership, we struggled with how best to quantify and articulate what *Social Change* has contributed during its forty years of existence. This challenge arose not only in anticipation of the anniversary celebration, but also in the context of recruiting and training new staff, selecting articles, and planning for the future. What makes a submitted piece of scholarship "*Social Change-y*" enough to satisfy the test of whether it is worth cutting down trees to publish? How do we explain what we stand for as an organization, while striving to respect diverse viewpoints and promote democratic decision-making? How do we continue to attract high-quality, innovative thinkers to publish with us, without missing potential authors who may be outside mainstream academia? And how do we explain the significance of the forum that *Social Change* provides—distinguishing ourselves in order to

attract new classes of committed *Social Changers*—without privileging the scholarly production of professional academics above the experience-based knowledge of practitioners in the field?

In the course of many conversations about these and other related questions, we found ourselves continually returning to a core theme, one that we believe describes the path along which the journal has developed over the previous four decades and one which we hope will help to guide future staffs in their work on the *Review of Law & Social Change*. We call that theme “From Page to Practice.” It captures our mission of fostering scholarship and dialogue that have a practical, useful influence on the ground, where social justice struggles begin and evolve. It is our way of describing what the journal’s founders saw missing from traditional law reviews and lacking in the law school environment.

“From Page to Practice” emphasizes our focus on scholarship with the power to promote change—not only change in unjust and repressive laws, but also change in how we think about law as a tool for advancing social justice. “From Page to Practice” also encapsulates what colloquia and symposia organizers were attempting to do by engaging with both theory and practice to create space for dynamic dialogue on pressing social issues. Finally, “From Page to Practice” provides a framework for evaluating article submissions and planning future programming. The first of these programs was the 2010 symposium, “From Page to Practice: Broadening the Lens for Reproductive and Sexual Rights,” which brought together over 150 students, academics, and practitioners to explore the future of reproductive and sexual rights.

The reflections in the following pages offer a range of perspectives on the interplay between page and practice. Our anniversary celebration participants, whose edited comments appear in this issue, explored various ways scholarship has affected their social justice lawyering and how practice-based knowledge has informed their scholarship. Many of the speakers’ ideas have traveled from page to practice and back again, some in the pages of this very journal. We are grateful to all of the participating alumnae for their dedication and thoughtful contributions to the celebration and to this issue.

Our explorations of forty years of *Social Change* history revealed many ways the journal has changed over time—from a discussion group to a journal, from a rival of other N.Y.U. journals to a friend of our D’Agostino basement neighbors, from years without a formal admissions process to struggles with the administration over control of our recruiting and writing competition. But much has remained constant throughout the decades, even as the inner workings of the journal have evolved. Now, just as in 1969, *Social Change* remains committed to providing a forum for progressive legal thought and to promoting work that bridges the gaps

2010] *FROM PAGE TO PRACTICE: AN INTRODUCTION* 429

between page and practice. *Social Change* also continues to exist as a community where public interest work is valued highly, where challenging the status quo is celebrated, and where like-minded law students can find support in the face of shared challenges. Before the anniversary celebration, many alumnae wrote to offer messages to their *Social Change* classmates or to recount fond memories of their time on the journal, conveying a sense of camaraderie and community that is precious. Brian Stull '00, a former student articles development editor, summed it up: “*Social Change* was the refuge for students alienated by the corporate pull of law school and a place for the cool kids and trouble makers, many of whom I still know and love.” This community continues to thrive today, and we are proud to be a part of it. At the beginning of *Social Change*'s fifth decade, we pause to celebrate the vision of the first *Social Changers* who broke ground in the late 1960s and to honor the tremendous work of forty years of subsequent *Social Changers* who have continued the pursuit of social justice.

Liz Kukura '09 & Katy Mastman '09
2008-09 Editors-in-Chief
August 2010

KEEPING SHARP YOUR CUTTING EDGE

STEVE BACHMANN*

I appreciate being invited to speak here tonight about the *Review of Law & Social Change* and this theme of “Page to Practice.” Your focus speaks well of your determination to remain in the avant garde of social change writing for lawyers. But to be honest, I have to acknowledge that I am facing a couple of conundrums.

The first is that when it comes to *Lawyers, Law, and Social Change*, the article I wrote in 1984 envisioning a very limited role for lawyers, I am not sure that I have changed my mind a lot.¹ I still don’t think much of lawyers. I said in 1984, and I still believe now, that it is organized people (those who have been organized into groups for taking action) that make social change, not lawyers—and if lawyers have anything to contribute to social change, it is by using their skills to help the social changers to organize.

My second problem is that I remain quite ambivalent when it comes to writing pages, even though I like to write a lot as a person and have written a lot as a lawyer. As a lawyer in general, I know that a lot of our job is to invent words to justify the infliction of pain, degradation, and death. Words allow humans to exploit and kill each other with greater ease and less guilt. Words at their worst have been used to justify a lot of obscene violence, including war, torture, executions, incarcerations, elimination of health, destruction of the environment, seizures of property, and more.

As a lawyer worried about social change and organizing, I know that words, in addition to affirming evil, can also assist it by making us into apathetic lumps. If a bad page cannot seduce us into doing evil, it will settle for making us stupid and passive.² The Right mobilizes cliché to

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1. Steve Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984–85).

2. See THEODOR ADORNO, *THE CULTURE INDUSTRY* (J.M. Bernstein ed., 1991) (comparing popular culture to a factory producing standardized cultural goods); HANS MAGNUS ENZENSBERGER, *CRITICAL ESSAYS* 3–14 (1982) (criticizing what the author calls the “mind industry”); MARCEL PROUST, *TIME REGAINED* 296–99 (Andreas Mayor &

make us think we live in a best of all possible worlds that should not and cannot be changed. Yet the Left does something similar when it encourages people to believe that polysyllabic logorrhea can serve as a substitute for concrete political action.³

So when all is said and done, I must admit that talking about “Page to Practice” is, for me, almost a contradiction in terms.

However, in the days of my Hegelian/Maoist youth, we used to say that contradictions make the world go ’round—or something like that. So in the limited time I have tonight, I think I can wrestle with some of these contradictions and make some suggestions about what the *Review of Law & Social Change* should consider when it contemplates “Page to Practice.”

FIRST, I would reiterate my theme that we should be careful about our priorities. Our priorities should be organizing first, law second. Good organizing creates good law. Or it creates bad law. Look at what labor unions and African Americans did between 1930 and 1965. But also look at what the New Right has done over the past forty years.

Beyond being an organizer first, be careful about privileging intellectual work over other forms of work. Even Foucault said “it is not with ideas that history is made to move forward, but with a material force, that of the people reunited in the streets.”⁴ We should keep in mind that Barack Obama *might* say that his years working as a community organizer on the South Side of Chicago were more valuable than his years on the *Harvard Law Review*. Of course, had he worked with the *Review of Law & Social Change*, his choice would be clearer . . .

SECOND, pages from the *Review of Law & Social Change* should put words to *good* work. They should identify bullshit and critique cliché. “Death Tax” should be called “excuse for hereditary aristocracy.” “Enhanced interrogation” should be called torture. War criminals should be called war criminals. Pages should expose the myth that humans are nothing but consumption machines and the lie that the market is free and always produces happy endings.

THIRD, the *Review of Law & Social Change* should produce practical pieces that help lawyers working in particular fields. One example that *Social Change* can cite from its own pages includes an upcoming article by K. Babe Howell, who will speak to you tonight as part of the next panel. The title of her article, *Broken Lives from Broken Windows: The Hidden*

Terence Kilmartin trans., 1993) (1927).

3. See, e.g., TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS* 147 (1995) (“The new academic left tended to mistake strong language for steady, consequential political engagement.”).

4. MICHEL FOUCAULT, *POWER/KNOWLEDGE* 24–25 (Colin Gordon ed., Colin Gordon, Leo Marshall, John Mepham & Kate Soper trans., 1980).

Costs of Aggressive Order-Maintenance Policing gives you an idea of the type of piece I am referring to.⁵

FOURTH, the *Review of Law & Social Change* should consider publishing occasional war stories. By “war stories” I mean stories of legal work done “in the trenches,” so to speak—stories that address details of actual practice that seldom come to the attention of other lawyers unless it’s around a tavern table assisted by a good number of beer bottles. These stories don’t have to be long, and they don’t have to carry a truckload of footnotes. But I do think a few pages of war stories per issue might give people a sense about how the law works in real life. The stories might provide some hints about how to survive emotionally or financially as a social change lawyer. They might include a hint or two for effective legal practice.

By way of example, in my 1984 article I wrote one story about law practice in the savannahs of deepest Arkansas. The context was an ACORN campaign to give citizens more power over their local utilities. In reflecting on the role of lawyers in social change, I wrote about my personal experience working with organizers and community members—not speaking for them, but giving them legal research and political theatre—to help move the campaign forward.

In an article I hope to publish in the near future, I will tell a story about a Republican voter suppression effort that ACORN fought in 2004 in Toledo, Ohio. Supposedly it was a grassroots lawsuit objecting to alleged improprieties in ACORN voter mobilization. However, our response to this lawsuit did not restrict itself to the dubious merits of the plaintiffs’ allegations. By pursuing corporate research we demonstrated that the lawsuit was in fact an AstroTurf lawsuit bankrolled by the Republican National Committee out of Washington, D.C.—and, surprise, the supposed grassroots dried up. For the exciting details you should maintain your subscription to *Social Change*.

FIFTH, the *Review of Law & Social Change* should deal with art. When I wrote my article in 1984, I was also working for a Master in Fine Arts degree from the University of New Orleans. I learned a lot about the importance of thinking in a nonlinear, non-lawyerly way. If you insist on sticking with words, look at Walter Benjamin’s *Arcades Project*, a classic in the technique of presentation through collage with words.⁶ But you also

5. K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009). In her article, Howell argues that policing minor offenses aggressively creates significant hidden costs that undermine the legitimacy of the criminal justice system and create substantial burdens for poor people.

6. WALTER BENJAMIN, *THE ARCADES PROJECT* (Howard Eiland & Kevin McLaughlin trans., 1999). Other notable instances of juxtaposing disparate segments of narrative to

have to look beyond words, because today words count even less than they did in 1984. This is so because the power of visual images and other non-literary stimuli has been appreciated and appropriated by corporate advertisers, Rightwing political hacks, fascist dictators, and pseudo-socialist thugs. The visual and the visceral are what are being used more and more to tell people what to buy, how to vote, what to value, how to think, and so forth. The good news is that a good verbal critique may still undercut the efficacy of a non-verbal cue. But the bad news is that it does not always do so. To undercut the efficacy of these images, I conclude that the *Review of Law & Social Change* may want to consider images—or, at the very least, it needs to publish words that evaluate images and investigate other non-literary approaches.

FINALLY, the *Review of Law & Social Change* should remember that it is building community between humans across space and over time. Evolution tells us we are social beings whether we like it or not. When I wrote my article in New Orleans in 1984, it meant something to me that people somewhere—even here in New York—shared an interest in my passions. It means something to me now that so many of us are gathered here to discuss and celebrate our passions.

Beyond the communities we have created in spite of geographical challenges, let us acknowledge the communities we have created in spite of chronological challenges. For my part, I stand amazed at the scope of historical time that is spanned by the people sitting in this room. Some people here—maybe including me—have written things when other people here were not even born. That to me means that all of us are reaching

create a higher, metanarrative include JOHN DOS PASSOS, *U.S.A.* (Houghton Mifflin Co. 3d ed. 1960); DORIS LESSING, *THE GOLDEN NOTEBOOK* (1962); JOHN REED, *TEN DAYS THAT SHOOK THE WORLD* (1919); KURT VONNEGUT, *BREAKFAST OF CHAMPIONS* (1973). Under the rubric of “postmodernism” this method of re-presentation has become common, bordering on the orthodox. See, e.g., Philip Auslander, *Postmodernism and Performance*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM* 97, 102–03 (Steven Connor ed., 2004) (noting postmodern theatre’s turn to a “plurality of voices” and “performers who self-consciously represent a range of very different identity positions”); Steven Connor, *Postmodernism and Literature*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 62, 76 (noting that literature alludes to arbitrary organizing forms such as the encyclopedia, the guidebook, the dictionary, the game, the tarot pack, and the periodic table); Catherine Constable, *Postmodernism and Film*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 43, 49 (noting film’s correlation to Frederick Jameson’s characterization of postmodern late capitalism’s schizoid characteristics of “isolated, disconnected, discontinuous material signifiers”); Stephen Melville, *Postmodernism and Performance*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 82, 89 (noting how visual art resorts to practices of quotation, appropriation, mediation, repetition, and how there is a “marked interest in rhetorical or signifying excess”). Lawyers may wish to familiarize themselves with this emerging cultural form, if not employ it; to a degree, the law school casebook might be viewed as a crude approximation of the postmodern approach.

434 *N.Y.U. REVIEW OF LAW & SOCIAL CHANGE* [Vol. 34:425

back to people like seventeenth century Thomas Rainsborough, eighteenth century Mary Wollstonecraft, and nineteenth century Frederick Douglass, all of whom were reaching out to us when we did not exist. And we, through our efforts, will hopefully make our own values and passions available to people who are now toddlers, or who have yet to be born. The English historian E.P. Thompson has called this phenomenon shaking hands across history.⁷

I would like to close with some lines from someone who was trying to shake hands with us when we were not yet alive. In four lines I think he does rather well in summing up these issues of page, practice, and vision:

I will not cease from Mental Fight,
Nor shall my Sword sleep in my hand
Till we have built Jerusalem
In England's green & pleasant Land.

The writer, of course, was William Blake,⁸ who wants to shake hands with us and the yet unborn. He and I thank you all for the opportunity to shake your hands and extend our hands to the good dead, the good living, and the yet unborn. Maybe we can still give them a planet that is green, with people living in peace and justice.

7. E.P. THOMPSON, *THE POVERTY OF THEORY AND OTHER ESSAYS* 42 (1978).

8. William Blake, *Milton*, in *A SELECTION OF POEMS AND LETTERS* 161, 162 (J. Bronowski ed., 1958).

DOMESTIC VIOLENCE REFORM: FROM PAGE TO PRACTICE AND BACK AGAIN

TERRY L. FROMSON*

Thank you for the opportunity to celebrate the fortieth anniversary of the *N.Y.U. Review of Law & Social Change*.

The *Review* played a significant role in both my law school experience and the work I have been doing since. N.Y.U. Law was my first choice for law school because I wanted to pursue public interest law, and, with its extensive clinical program and the *Review*, N.Y.U. provided the most opportunities to do so. I continue to recommend it as *the* law school for individuals interested in this area of law.

Journals like the *Review* obviously play a significant role in the practice of public interest law. They give support to legal arguments in litigation and move policy agendas along in vital ways. They give perspective to practitioners by identifying a problem; laying out legal and non-legal responses; providing rational, critique-oriented approaches; recommending future actions; and helping to correct approaches to legal problems that may be well-intentioned but lead to counterproductive results.

The subject of the article that I wrote as a student, *The Case for Legal Remedies for Abused Women*, provides an example of how journals like ours can aid in the development of good public policy.¹ When I wrote my article, domestic violence was just being exposed as a social issue; previously, domestic violence had been shrouded in silence as a private family matter. The advocacy movement itself was also relatively new. By the mid-1970s, domestic violence was becoming a public issue as the media began writing about what was going on behind closed doors. Legislative change was also just beginning; in 1976, Pennsylvania became the first state

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1. Terry L. Fromson, *The Case for Legal Remedies for Abused Women*, 6 N.Y.U. REV. L. & SOC. CHANGE 135 (1977).

to adopt a civil law applicable outside of the marital relationship.²

The recommendations in my article were garnered from reading what little there was in print at the time and talking to many people in the field. The recommendations themselves were relatively basic: making available immediate civil protection orders, treating domestic violence like other crimes, litigating in order to hold the system responsible, and educating and providing social services for victims.

I have recently read my article for the first time in a long time, and, reflecting on it, I feel as if I am reflecting on a movement—a movement that I have participated in throughout my career. As a legal services lawyer, I represented battered women seeking protection orders and unemployment compensation. At the Women's Law Project (WLP) I now work on targeted issues, as well as broad-based advocacy, to improve systemic responses to domestic violence.

A lot has been accomplished since I wrote my article in 1977, and many of my recommendations have been incorporated into existing law and policy. Today, domestic violence is part of our public dialogue—it is frequently in the news, and information about it appears on buses and on cards in public restrooms. States have passed protection order statutes and offer various forms of relief for victims of domestic violence, including ex parte hearings and lifetime relief. State laws providing for the inclusion of gun removal in protection from abuse orders are some of the strongest gun laws in the nation. In addition, police protocols and training have been updated to include information about domestic violence. In Philadelphia, 911 gives domestic violence calls high priority, and many states keep registries for police verification of protection orders. Even if police do not observe domestic violence, they can make warrantless arrests of suspects under certain circumstances if they have probable cause. Judicial leadership has also driven reforms in the court systems of many jurisdictions. Prosecutors today have special family violence and sexual assault units, and judges are better trained. In addition, special domestic violence courts have been established.

However, challenges remain that make my original recommendations still quite relevant today. While laws on the books and existing police directives say the right thing, what they actually can accomplish depends on people in the system applying the law properly and fairly. Simply changing attitudes is a long term job, and this means that there are still problems in practice, in both the civil and the criminal systems. Police often see their job as one of referring victims to the civil court system rather than enforcing criminal laws themselves. The court system itself is

2. 35 PA. CONS. STAT. §§ 10181–10190 (1976) (current version at 23 PA. CONS. STAT. ANN. §§ 6101–6116 (2010)).

complex—women often drop their complaints or are not believed; even when women do persist, protective orders often are not issued. More fundamentally, there are still not enough resources to make families safe. We lack sufficient numbers of lawyers, advocates, and shelter beds; information on navigating the court system is hard to find; and there are long lists of those waiting for assistance.

On the technical side, systems get bogged down when perpetrators learn new ways to abuse and terrorize their victims, for example by filing criminal complaints and petitions for protection orders against victims or by using new technology such as keystroke tracking or GPS to stalk their victims. Such behavior creates situations that neither police nor judges seem capable of unwinding, and, as a result, advocates are forced to find new ways of protecting domestic violence victims.

Advocates also need to recognize new hazards that are punishing or blaming victims or placing them at risk. For example, in the early 90s, WLP learned that all insurers—life, health, disability, and property—were denying coverage to domestic violence victims, inappropriately comparing victimization to voluntary activities such as skydiving, and blaming the victim. In response, WLP, in coordination with the Pennsylvania Coalition Against Domestic Violence, led an effort to prohibit such policies. Our partnership succeeded in getting insurance laws changed in forty-three states to protect survivor access to necessary insurance.

In addition, victims who flee their batterers have historically been unable to change their names to better conceal their whereabouts because name-change laws have traditionally required publication of the name change in newspapers. Some states have now amended their name-change laws to allow courts to waive publication requirements for safety reasons, thus allowing survivors to obtain a confidential name change. In the welfare system, survivors who were placed at risk of further domestic violence from child support and work requirements now can seek a waiver of those requirements. The recognition that domestic violence follows its victims into the workplace has led to laws requiring safety accommodations for employees, and custody laws now require consideration of domestic violence and safety conditions when courts award custody and visitation. At the WLP, I have had the privilege of participating in these reforms.

We continue to evaluate the effectiveness of remedies to address domestic violence, and journal articles are an important part of our evaluative efforts. New articles, like the one published in the 2008 volume of the *Review* by Laurie Kohn,³ remind us that some of the efforts taken

3. Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191 (2008).

have “divorced the victim” from the advocacy, thereby undermining the objective of making families safe.

This brings me back to the importance of this and similar journals to the public interest legal community. Journals make a difference in shaping both policy work and litigation. Practitioners often search journals to find new ideas, to gain an understanding of what is being done on a particular problem, or to determine whether an approach has merit. I would like to see even more connections between practitioners and journal writing—these could take the form of a dialogue between practitioners and student article writers to generate ideas for articles that would further policy changes. The *Review* should also let public interest lawyers know what you have published so that our work can benefit from your contributions. It would be great if the *Review* and other social change journals sent tables of contents to the National Legal Aid and Defender Association to be sent to its members.

When communication between journals and practitioners is absent, opportunities may be missed. Dialogue is also necessary in the social science arena. An example is from work done by WLP to address the miscoding of sex crimes in Philadelphia. In 2000, as a result of investigative journalism by the *The Philadelphia Inquirer*, the WLP learned that the Philadelphia police were misclassifying sex crimes with the result that thousands of sex assault complaints were being ignored. As a result of our advocacy, the police reviewed and reinvestigated the misclassified cases and agreed to allow the advocacy groups to review cases and provide input into improving police investigation of sex crimes in Philadelphia. During the course of our investigation, we came upon a 1979 publication reporting on a study of the Philadelphia Police Department that unveiled the misclassification of cases twenty years earlier. Communication between publications such as the *Review* and practitioners in the field can help to ensure that gross abuses such as this one are uncovered and remedied as quickly as possible.

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NEW YORKERS OF COLOR

K. BABE HOWELL*

I am glad to be here as a member of this panel celebrating the fortieth anniversary of the *N.Y.U. Review of Law & Social Change* and talking about how our work on *Social Change* has informed our practice. *Social Change* was my home during my time in law school—a place where students who actually cared about social justice and the deepening injustices in our society gathered. It is for this reason that I placed my article, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*,¹ in *Social Change*. Though this panel is titled “From Page to Practice,” my trajectory was the opposite. It was my experience in the real world of practice that inspired me to put pen to page after years of struggling against injustice in New York City’s criminal courts. The mass criminalization of people resulting from Zero Tolerance Policing and “quality of life” initiatives adopted in the mid-1990s has made it nearly impossible for a young man of color in our city to avoid arrest or harassment, while White men and suburban youth engage in the same low-level victimless conduct and grow up to be president.²

As a defense lawyer and a teacher, I struggle to make people understand and care about the real costs of these “minor arrests” and the injustices they impose on individuals, families, and communities. This is an uphill battle. People believe that misdemeanors are “minor” (at least until someone they care about is charged with one), and academics who write

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1. K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 296 (2009).

2. Two of the last three presidents have admitted to marijuana use. See BARACK OBAMA, DREAMS FROM MY FATHER 93 (1995) (“I blew a few smoke rings, remembering those years. Pot had helped, and booze; maybe a little blow when you could afford it.”); Gwen Ifill, *Clinton Admits Experiment with Marijuana in 1960’s*, N.Y. TIMES, Mar. 30, 1992, at A15 (“Gov. Bill Clinton of Arkansas said yesterday that he experimented with marijuana while he was a Rhodes Scholar at Oxford University in the late 1960’s . . .”). President Bush said he “wouldn’t answer the marijuana question . . . ’cause I don’t want some little kid doing what I tried.” CNN.COM, Politics, *Author: I Should Give Tapes to Bush* (Feb. 21, 2005), <http://www.cnn.com/2005/ALLPOLITICS/02/21/bush.tapes> (alteration in original). He also refused to answer a question about cocaine use. *Id.*

critically about the criminal justice system typically focus on felonies, excessive imprisonment, and capital cases. While these subjects are important, aggressive policing of minor offenses exacts disproportionately high costs from individuals who are generally as law-abiding as those of us sitting in this room, as the prosecutors who prosecute them, as the police who arrest them, as the bankers on Wall Street, and as the kids in Westchester.

A little background about what brought me to criminal work and to my focus on minor offenses. When I came to N.Y.U. School of Law, I had already worked for a number of years doing anti-eviction work with families at The Legal Aid Society. Like many would-be public interest lawyers, I was interested in the “innocent poor,” the victims of unscrupulous landlords, lenders, and employers. I worked during law school at a small firm that did plaintiff-side employment discrimination cases and represented labor unions, and I spent my first summer at the Attorney General’s Office in West Virginia working in its Civil Rights Division. There, I worked on racially-motivated evictions and job terminations, discrimination against children based on their HIV status, and even a magistrate’s firing of a pregnant clerk. My goal upon graduation was to work in a small, rural legal services office representing poor people in the wide range of civil matters that destroy and disrupt lives. Why represent criminals, I thought, when so many people are victimized by discrimination and corporate malfeasance?

During law school, however, two things happened that changed my viewpoint and made me recognize that so many of the people in the criminal justice system are every bit as “innocent” as the people that I went to high school and college with. The only differences between my experience and theirs were where they lived and the color of their skin. I had the advantage of observing the impact of geography and race within my own family. My father is Black, my mother White, and my extended family runs the gamut from pale (including those of us who are of mixed race) to dark.

First, my second year criminal procedure class stoked my growing sense of outrage about how people are treated by the criminal justice system. The rules and sanctions that “protect” our Fourth, Fifth, and Sixth Amendment rights only make sense to those who are confident that they will never be the target of police stops or investigations. I learned that our constitutional rights are not violated when police lie to suspects, interrogate children without their parents, or stop and frisk men for looking in a jewelry store window in broad daylight. The question that is so central to constitutional analysis—when is a person “free to go”?—seemed to have very different answers depending on the class and race of the person asking it. I sat in class day after day, thinking, Really? Would

you feel “free to go” if your skin was a different color?

Second, days after the acquittal of the police who beat Rodney King, my cousins, two young Black men who had the misfortune of living in Los Angeles in 1992, were thrown in jail while going to buy pizza and held for twelve days before being released. They never committed any offense and were never charged with any crime.

After graduating from law school and accepting a position with The Legal Aid Society’s Criminal Defense Division in New York City, I got a front row seat to witness the parade of people dragged into the criminal justice system as a result of Rudolph Giuliani and William Bratton’s new Zero Tolerance Policing strategy, under which people were arrested for selling umbrellas and flowers on the streets, drinking beer on their stoops, possessing marijuana or other drugs for personal use, and “trespassing” in their own buildings. The number of misdemeanor and lesser arrests skyrocketed from around 80,000 in the late 1980s to around 200,000 in the late 1990s,³ and, following a slight decline after September 11, 2001, has continued to rise to over 245,000 in 2009 with no sign of abatement.⁴ Tens of thousands of those arrested had no prior criminal record,⁵ and the arrestees are consistently at least eighty-five percent people of color.⁶ Few if any people think about the costs of these policies or the injustices hidden in these numbers. The pressure on police officers⁷ to make arrests for minor offenses was sweeping largely law-abiding citizens into the criminal courts. No one seemed concerned about this because the arrestees were rarely sent to jail.

My article looks at the hidden costs of these policies.

Broken Lives from Broken Windows has a very pragmatic goal, a goal consistent with the theme of this celebration. That goal is to convince someone—any of the actors who could make a difference: the police, the prosecutor, the state or local government, or the court—to make the practice of arresting people for misdemeanor and non-criminal offenses

3. Freda F. Solomon, *The Impact of Quality-of-Life Policing*, N.Y. CITY CRIM. JUST. AGENCY RES. BRIEF, Aug. 2003, at 2, available at <http://www.pretrial.org/Docs/Documents/brief3.pdf>.

4. N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., ADULT ARRESTS, NEW YORK CITY: 2000-2009 (2010), <http://criminaljustice.state.ny.us/crimnet/ojsa/arrests/nyc.htm>.

5. Solomon, *supra* note 3, at 3 (approximately 90,000 out of 164,865 people charged with misdemeanors in 1998 had no prior criminal record).

6. *Id.* at 4.

7. For more on the pressure on police to make minor arrests and issue summonses, see Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy’s 81st Precinct*, VILLAGE VOICE, May 4, 2010, at 12, and Graham Rayman, *The NYPD Tapes: Part 2*, VILLAGE VOICE, May 11, 2010, at 12 (two-part series featuring tape recordings made by whistle-blowing police officer Adrian Schoolcraft that expose pressure on NYPD officers to meet stop-and-frisk and arrest quotas).

less costly to already at-risk communities. The article examines the costs of Zero Tolerance Policing (ZTP) of quality of life offenses and suggests a number of ways to reduce these costs.⁸

Why the title? “Broken Windows” is the name of the theory used to justify ZTP of minor offenses in New York City.⁹ According to the Broken Windows theory, correcting minor social disorder will reduce serious crime. A broken window, left unrepaired, will lead to more broken windows, vandals, graffiti, and eventually serious crime. Thus, aggressively policing minor quality of life offenses to social order should, the theory predicts, reduce serious crime. In New York City, to be sure, serious crime dropped dramatically after ZTP of minor offenses was adopted. Skeptics of the Broken Windows theory point to the fact that New York City’s crime drop was mirrored in many jurisdictions without ZTP strategies and that the drop began *before* the ZTP approach to minor offenses was adopted.¹⁰ While I share this skepticism, my article does not focus on the link between order maintenance policing and serious crime. Instead, it focuses on the costs associated with bringing hundreds of thousands of people through the criminal justice system for minor offenses.

Broken Lives from Broken Windows explores the costs that are imposed on people of color, the poor, and those with the fewest resources by the policing of minor offenses. Wealthy people and suburban youth are not policed aggressively, and are rarely arrested for possession of controlled substances in small quantities or drinking alcohol while on picnics in the park. When police stop suburban kids and find marijuana, they throw away the drugs and speak to their parents. On the rare occasions when suburbanites or wealthy people are arrested for minor offenses, they hire attorneys, point to their clean records, and refuse to accept a disposition short of dismissal.

On the other hand, people who live in New York City’s communities of color are subjected to ZTP. ZTP requires the police to make arrests, rather than issuing summonses, talking to or warning offenders, or speaking to minors’ parents. On average, the decision to arrest will cost the arrestee twenty-four hours of their life. It will also take the arresting officer off the street for at least a few hours. Dispositions may include dismissals or non-criminal “disorderly conduct” pleas, but often require

8. Specific references for the factual material summarized here can be found in my article, *Broken Lives from Broken Windows*, *supra* note 1.

9. James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 19.

10. Further, a recent survey of high-ranking retired police officers suggests that the crime reduction might have been exaggerated by the manipulation of crime statistics. William K. Rashbaum, *Retired Officers Raise Questions on Crime Data*, N.Y. TIMES, Feb. 6, 2010, at A1.

2010] *FROM PAGE TO PRACTICE AND BACK AGAIN* 443

community service and fines. Fighting a case requires repeat court appearances. Because jail is rarely a result of these minor quality-of-life arrests, the real costs of ZTP are overlooked.

The costs of employing a ZTP response to minor offenses undermine social justice in two ways. First, the arrests have very real direct and collateral consequences that create substantial barriers to housing, education, and employment for the already poor and minority targets of ZTP. These costs are not confined to the arrestees alone but also affect their families and communities. Frequently, the arrest alone leads to unexplained absences from work and loss of employment. For an individual who agrees to do community service, additional days of work are lost signing up for community service and providing proof of completion, even if the community service itself can be done on weekends. For anyone who maintains her innocence and insists on a trial, multiple court appearances are typically required. Targets of ZTP lose hourly wages or miss days of school if they insist on their innocence.

These costs are largely borne by poor, working people and often lead to pleas, regardless of innocence. Pleas, even for no jail time, carry their own costs. First, even non-criminal pleas carry a “mandatory surcharge” and, ironically since quality of life offenses are victimless, a “victim’s assistance fee.” While a \$100 or \$200 fee may be an inconvenience for a middle-class person, for the poor and working poor, the fine usually comes from money that would otherwise go to necessities such as food or school supplies. Failure to pay the surcharge and fee results in a civil judgment that can prevent the person from qualifying for loans for education and cars to get to work. In this computerized age, employers routinely run record checks and refuse to hire employees with minor offenses or open cases. Convictions can also tear families apart by triggering immigration removal proceedings or exclusion from public housing. The effects of a minor victimless offense can have a profound impact on a person’s life and on her family.

These economic costs and collateral consequences need not be imposed in order to achieve the goal of ZTP, if that goal is simply to maintain order. Nor are these consequences proportional to the offenses to which they relate. We do not arrest people for marijuana possession or for having an open alcoholic beverage in public with the goal of causing them to lose their jobs and homes. Rather, the purpose of ZTP is to maintain social order on the theory that this will reduce serious crime.

A second societal cost that *Broken Lives from Broken Windows* explores is based on procedural justice research. This research suggests that unfair treatment at the hands of the criminal justice system may lead a person to resent the system and reoffend, thereby increasing, rather than decreasing, crime. Thus, the aggressive pursuit of minor offenses may, in

fact, make some targets more, rather than less, inclined to commit crimes. Procedural justice research has shown, somewhat counter-intuitively, that it is the fairness with which people are treated by the criminal justice system, rather than the outcome of their case, that has the most influence on their perception of law enforcement legitimacy. Even when outcomes are positive—such as when cases are dismissed—a perception that the procedure used to reach that outcome was unfair may lead to resistance and reoffense. Unfair procedures are those that do not provide the participant with a voice, and those that are discriminatory, disrespectful, or unconcerned with accurate fact finding. The criminal justice system's processing of minor offenses appears to be all of these things. A person arrested for a minor offense will be shocked by the filthy conditions in the "pens"¹¹ where arrestees are held before seeing a judge, will notice that over eighty-five percent of arrestees are people of color, will have little opportunity to talk to a lawyer and none to talk to the court, and will see a fact-finding hearing only if she is one of the fraction of one percent of cases that goes to hearing or trial.

My theory, and the theory behind *Broken Lives from Broken Windows*, is that the combined economic and legitimacy costs of aggressively policing minor offenses undermine the efficacy of policing social order to reduce crime. I propose two basic courses of actions. First, there is no doubt about the costs to arrestees of fines and fees, missed school and work, immigration removal, and public housing evictions. Actors in the criminal justice system can reduce these costs in a number of ways. Second, a longitudinal study should be conducted to determine whether being targeted by ZTP actually increases criminality. A pilot project can examine whether arrest or warning is more effective to prevent reoffense. It would be a simple matter to compare outcomes for those stopped with marijuana and arrested and those found in possession of marijuana and warned to determine whether rearrest rates differ between the two groups.¹²

Eliminating economic costs and police legitimacy costs through the use of warnings and civil summonses rather than criminal arrests would remove bars to employment and reduce evictions and immigration removals of legal residents. The police could reduce these costs by making a simple policy decision to warn instead of arrest. One benefit of a non-

11. "Pens" is the word used for the holding cells behind and below the courtrooms where arrestees are kept for about twenty-four hours after an arrest before they see the judge.

12. Such studies have been conducted to determine the effect of arrest versus warning in misdemeanor domestic violence cases. Raymond Paternoster, Ronet Bachman, Robert Brame & Lawrence W. Sherman, *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 *LAW & SOC'Y REV.* 163 (1997).

2010] *FROM PAGE TO PRACTICE AND BACK AGAIN* 445

arrest approach would be to increase the presence of officers on the street and reduce overtime expenses. The legislature could review victimless offenses and make certain victimless crimes civil offenses. Courts could schedule appearances in the evening and on weekends so arrestees would not have to choose between school or work and their right to a trial. They could also excuse arrestees from all appearances at which no fact finding is conducted so that repeat appearances would not cause missed work. District attorneys could adopt their own guidelines, reducing or dismissing charges where the offenses are minor or the evidence of disparate racial impact is stark, such as in cases of marijuana arrests.¹³

Although the costs of hundreds of thousands of minor arrests each year are largely borne by the working poor and people of color, these costs also affect the rest of society. They lead to unemployment and resentment, thereby creating a feedback mechanism that impedes policing's efficacy in reducing serious crime. Furthermore, these costs are disproportionate to the offenses that they arise from and burden individuals and urban communities in ways that wealthy or suburban people guilty of the same offenses are not burdened. To address both of these issues, we must examine the real costs of ZTP and ways to reduce these costs.

ZTP is a policing practice that was adapted from the pages of a magazine describing the Broken Windows theory. Although the original *Broken Windows* article never suggested a practice of arrests in response to minor disorder, New York City adopted a zero tolerance approach to disorder resulting in hundreds of thousands of minor arrests each year. In this article I bring the question of what this practice really means back to the page. What does the practice cost? Is it fair to place barriers before young people of color growing up in New York City that their White and suburban counterparts do not face? Are there ways to reduce these burdens? My hope is that these pages inspire new practices that recognize and mitigate the impact of arrest-based approaches to order maintenance on the poor and people of color.

13. Although Whites use marijuana more than Blacks or Hispanics, eighty-three percent of people arrested for misdemeanor marijuana possession in New York City in the period 1997-2007 were Black or Hispanic, and only fifteen percent were White. See HARRY G. LEVINE & DEBORAH PETERSON SMALL, *MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY 1997-2007*, at 8 (2008), available at http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf.

FROM PAGE TO PRACTICE

CEDRIC MERLIN POWELL*

I am honored to be here with my fellow alums and all of the members of the *N.Y.U. Review of Law & Social Change*. It is the perfect time to reflect on the theme of this evening's celebratory panel—From Page to Practice. As lawyers, legislators, policy-makers, and academics, this theme resonates with us because it is common to all of our work. This commonality is found on the page where we grapple with theories, doctrines, and rules to understand the societal issues that we seek to address. The page is where this process begins, where we look at everything from judicial decisions that explain and critically analyze pre-existing norms to scholarship that is written to specifically resolve contradictions or doctrinal gaps in the law. My reference to the page is expansive because I want to emphasize the interdisciplinary nature of the page—how the ideas and concepts embodied on the page can be transformed in practice. Our primary objective should be to move from the theoretical to the practical implications of implementing ideas from page to practice. This is not a simple task.

I have always been involved, on some level, with social justice issues. Before I arrived at N.Y.U., I spent my college years at Oberlin College, a very progressive institution in the liberal tradition. So, naturally, I was attracted to the institutional mission of N.Y.U.: a private university in the public service.

My own experience on the *Review of Law & Social Change* had a great impact on my choice to become an academic lawyer: I learned about the dynamics of collegiality, collaboration, and editing, as well as many other practical skills. I also learned the importance of the *page*. I learned that ideas are powerful and that they have tremendous value when you commit them to paper.

My approach has always been to critique and challenge existing systems and how they operate: Do they perpetuate subordination, subjugation, and discrimination? Are there ways in which we can constructively address how these systems reinforce the present day effects

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of past discrimination?

As a law professor, my approach has been to critically analyze history and how it provides a narrative for subordination—how it rationalizes oppression by employing neutral rhetoric. For example, in my *Race and the Law* class we have been drawing on analytical and doctrinal parallels between slavery, the cyclical oppression of American Indians, and the conquest-oriented oppression of Latino/as. Many of my students have not been faced so directly with a complete history of race in the United States. Exposing them to the full history is important because it sharpens their perspective, and it will aid them in moving from page to practice. With a broader critical perspective, students will approach issues of social change with flexibility and creativity. Students, drawing upon a full historical understanding of race in the United States, will be able to contextualize and analyze problems without defaulting to the comfortable allure of neutrality.¹ They will move from page to practice by understanding the complexities of race and embracing progressive solutions that will move us toward true inclusion.²

For example, lower court decisions and scholarship pertaining to civil rights and Critical Race Theory have contributed to advancements in litigation, legislation, and policy. The text that I use in my *Race and the Law* class has example after example of how an interdisciplinary, progressive, and innovative approach to the law has broken down entrenched societal discrimination.³

The school desegregation cases are a paradigmatic example of the central meaning of from page to practice. Theories on the page that challenged the race-based caste system of twentieth century America ultimately became the core principles of our polity. Ideas from the page moved into practice. Everyone knows about *Brown v. Board of Education*⁴ and its impact on American society—how it overruled the racist “separate but equal” mandate of *Plessy v. Ferguson*.⁵ Yet the *Brown* decision is taught in isolation—*Plessy* is followed by *Brown* with no decisions in between—so it appears as if society finally “woke up” in 1954

1. See generally Cedric Merlin Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823 (2008) (arguing that we must dismantle colorblind constitutionalism and instead adopt a rhetoric of inclusion and substantive equality).

2. For a comprehensive account of the civil rights and Black Power movements and how they shaped and made possible Barack Obama’s ascendancy, see PENIEL E. JOSEPH, DARK DAYS, BRIGHT NIGHTS: FROM BLACK POWER TO BARACK OBAMA (2010).

3. JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILDMAN, RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2d ed. 2007).

4. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

5. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

and decided to do the right thing. This was certainly not the case. There was a long and winding struggle to get to *Brown*.⁶ This struggle was fueled by ideas on the *page*. For example, in *Mendez v. Westminster School District of Orange County*, the Ninth Circuit Court of Appeals declared that several of California's school boards had violated the Equal Protection Clause in establishing separate schools for Mexican-Americans and affirmed a grant of injunctive relief restraining further discrimination against pupils of Mexican descent.⁷ This was a landmark decision because it focused on the inherent evil of *state-sponsored segregation* almost a decade before *Brown*.

We can see that the *page* and *practice* are intertwined.⁸ If our ideas mean anything, they should be put into practice. The page can be transformative—the very foundation for *Brown* and its progeny was constructed in decisions like *Mendez*. The ideas on the page in *Mendez*—that state-sponsored segregation was unconstitutional—would later become the doctrinal linchpin of *Brown*. Moving from page (segregated schools are unconstitutional) to practice (fully integrated schools) has proven to be a struggle that has lasted over fifty years.⁹ That journey continues today. It is our obligation to ensure that substantive ideas are disseminated in the public sphere. It is here that the move from page to practice can be transformative. Indeed, there is a powerful resonance when ideas from the page are embraced in practice.¹⁰

I think that we do an effective job of disseminating our scholarship within the academy. However, I think sometimes we do a less effective job of disseminating scholarship to the practicing bar. I think that the *Review*

6. CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED* (2004) (chronicling the work of the lawyers who started the legal fight for racial integration decades before the *Brown* decision, as well as the obstacles they faced and overcame).

7. *Mendez v. Westminster Sch. Dist. of Orange County*, 161 F.2d 774 (9th Cir. 1947), *aff'g* 64 F. Supp. 544 (S.D. Cal. 1946). “The *Mendez* decision apparently was the first decision to explicitly reject the reasoning of *Plessy v. Ferguson*.” PEREA, DELGADO, HARRIS, STEFANCIC & WILDMAN, *supra* note 3, at 754.

8. There were other decisions preceding *Brown* that also moved from the page (or the theory challenging racial subordination) to practice (a constitutional mandate to eradicate systemic segregation). *See, e.g.*, *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding segregated and vastly unequal facilities and resources in a state university's law school program unconstitutional); *McLaurin v. Okla. State Regents*, 339 U.S. 637 (1950) (holding segregated facilities in a state university's graduate school education program unconstitutional).

9. *See* Cedric Merlin Powell, *Schools, Rhetorical Neutrality, and the Failure of the Colorblind Equal Protection Clause*, 10 RUTGERS RACE & L. REV. 362 (2008) (detailing the continuing struggle for school desegregation).

10. *See* Johnson v. Bredsen, 130 S. Ct. 541, 542 (2009) (Stevens, J., dissenting) (arguing that “state-caused delay in state-sponsored killing can be unacceptably cruel” (citing Jeremy Root, *Cruel and Unusual Punishment: A Reconsideration of the Lackey Claim*, 27 N.Y.U. REV. L. & SOC. CHANGE 281, 312–13 (2002))).

2010]

FROM PAGE TO PRACTICE

449

of Law & Social Change is a natural bridge over the gap between legal scholars and civil rights practitioners. Through symposia, colloquia, and panel discussions like this, we can effectively bridge that gap.

It is also up to us—legal academics, practitioners, policy-makers, and government officials—to come together as often as possible in other contexts that complement the academic environment. There should be a true dialogue—From Page to Practice—to deepen our knowledge of our communities and the underlying problems that plague these communities.

In my own work, I draw on journal articles from a wide range of sources. I try to get a sense of the issue I am addressing from a variety of perspectives. One of the first journals I check is the *Review of Law & Social Change*. I know that the work will be comprehensive, provocative, and relevant. I think the legal scholarship produced in journals like the *Review of Law & Social Change* is particularly important because it broadens the critical perspectives of our students and the practicing bar. Our students should be able to think critically with a flexibility that is enhanced by exposure to a variety of ideas rather than a singular viewpoint or ideological orientation.

Thematically, from page to practice encompasses everything that we do as scholars, policy-makers, and activists. Drawing upon our commitment to social justice, developing a critical approach through the unpacking of ideas on the page, and moving from page to practice, we know that ideas can truly change our world for the better.

We must be actively involved in the pursuit of critical solutions. The scholarship of the *Review of Law & Social Change* does just that—it promotes positive change through an interdisciplinary approach to the law. The *Review* is truly a bridge from page to practice because the ideas that come alive on its pages have blossomed into creative solutions that have been put into practice. I look forward to the fiftieth anniversary celebration and all of the progress that we will have made in the ensuing decade.

LOOKING FORWARD TO FORTY MORE YEARS OF MOVEMENT BUILDING: MEDITATIONS ON “FROM PAGE TO PRACTICE”

AMY SUGIMORI*

As we come together to celebrate the fortieth anniversary of the *N.Y.U. Review of Law & Social Change*, I would like to take the opportunity to thank and recognize the efforts of the *Social Change* editorial board for organizing a fortieth anniversary event. I would also like to echo a sentiment that has already been expressed by some of my fellow panelists: as a young idealist entering law school, there were moments when I questioned how, or if, I would fit in. There were, thankfully, two places where I found a home: the Immigrant Rights Clinic and the *Review of Law & Social Change*. At *Social Change*, fellow students came together with varying interests—from criminal justice to reproductive rights or social and economic justice—but united by a set of shared values.

As a first-year law student, I was interested in immigrant worker rights and was swiftly drawn to *Social Change* because of its core commitment to ensuring that even those with the least societal power would one day receive their full share of rights, be treated with respect, and be accorded value. Clearly, I am not the first to have seen this light; for forty years, *Social Change* has been a place where progressive students and scholars come together to share the details of their diverse commitments. As a result, *Social Change* is bigger than us; it represents a community of shared values and diverse interests.

My fellow panelists have impressed all of us with their rich understanding of particularly specialized areas of law. I, too, have spent much of my career focusing on a very specific field. While at N.Y.U., I participated in the Immigrant Rights Clinic; ten years later, I head an organization, La Fuente, committed to this same cause. I join my fellow panelists in celebrating the *Social Change* community for its commitment to specific issues and for providing an intellectual and physical space for thinking with breadth and depth about both the meaning and the nuts and bolts of social justice action.

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At N.Y.U., *Social Change* provided me with a home base and a support system. Perhaps not surprisingly, I increasingly valued this foundation as I moved into the world of practice. As I became more involved in public interest litigation, I realized that I was operating within a changing legal and political framework. Due to the increasing politicization of judicial appointments, decreased funding for legal services programs, and the dismantling or reformulation of important legislative structures in which the public interest community had operated,¹ it became necessary to develop new approaches to advancing social justice. Much of this was already clear by my first year of law school, and many people had written extensively on this issue—often in the pages of *Social Change*. However, these changes hit home personally for me only when, as a NAPIL² fellow in Texas, I saw first-hand the limitations of litigation alone as a tool for advancing social justice.

As a young lawyer representing tree planters with guest worker visas, I learned how difficult it is to use class action litigation alone to change large corporate practices and structures designed to maximize profit without regard to the conditions of the least powerful workers in the system. Not only is it extremely difficult to legally challenge a company's responsibility with respect to labor conditions attributed to labor contractors, class action litigation unconnected to worker organizing is not empowering to the workers themselves. If you lose in court and the workers are not organized, their situation does not change. The experience of putting significant effort into class action litigation alone and then losing that litigation reinforced my belief in the importance of organizing workers and actively engaging as many participants as possible in a movement for a more just society.

As many of us in the public interest community began recognizing the magnitude of the changes to the political context, we used this restructuring as a chance to get back to fundamentals. We saw the moral and practical value of returning to a sorely neglected cause: increasing the political voice of the most disenfranchised. Thanks to this refocusing, we have worked with community members to build power bases among those people who have not traditionally held power to organize, leverage power, and influence policy outcomes. In the process, we have attempted to create a more equitable and more open political arena. A striking example

1. See, e.g., Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (limiting the power of federal judges to grant habeas corpus relief); Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (significantly amending U.S. immigration laws); Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (severely limiting the availability of cash assistance for poor people).

2. Now Equal Justice Works.

of this approach is the proliferation of worker centers around the country that has taken place over the past decade. Worker centers vary in industry and approach but tend to combine worker organizing with political advocacy, direct representation, and strategic litigation to improve conditions for workers in specific industries, such as domestic work, or for particularly vulnerable workers, such as new immigrants.

Along with recognizing the power of collective action, we have rediscovered the value of institutions and institution building. Advocating for progressive policies is, without question, a noble endeavor; but, without authority and capacity, the endeavor becomes purely theoretical as one is unlikely to see even the most pragmatic policy solutions realized.

But how does the theme of partnering legal innovation, organizing, and strategic movement building connect with the question of moving from the page to practice in the context of *Social Change*? An experience from my personal life provides an illustration of much of what is good about *Social Change* and how these themes fit together. While at the National Employment Law Project, I co-published an article in *Social Change* with my colleagues, Luna Yasui and Rebecca Smith, entitled *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*.³ The article provided a survey of diverse local campaigns and initiatives meant to ensure that workers received fair wages, had access to interpretation services, and were not subjected to retaliation or abuse due to their immigration status.

Initially, we chose to self-publish the article, handing out photocopies and posting it on our organization's website. At the time, of course, this seemed like the best way to accomplish our goals. We wanted to ensure that groups organizing for local-level change had access to information about what their counterparts were doing in other areas of the country, as well as legal authorities to cite, and thus could easily reference best practices. At the same time, we hoped to create a forum for cross-fertilization of creative ideas and movement building.

As experts in our field, Luna, Rebecca, and I were called to testify before various state legislatures and to use our research and models in briefings to appellate courts. It soon became clear to us that it would be significantly more persuasive to be able to cite an authoritative source. Not surprisingly, rather than waving a stack of papers in front of policymakers in order to demonstrate that we had the research and information to back up the propositions we were promoting, we found that it was significantly more effective to say, "as published in the *Review of*

3. Luna Yasui, Rebecca Smith & Amy Sugimori, *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597 (2003-04).

Law & Social Change, I have extensive research on the approaches different localities have adopted to address this problem, and models that can be adopted.”

This example brings me to my central point: the importance of recognizing the value and the sheer magnitude of our collective work. Over the past forty years, all of us who celebrate *Social Change*'s fortieth anniversary⁴ have built an authoritative resource for research, innovation, and essential information on pressing issues of law and social justice. All of us here today put in hour after hour checking citations for accuracy and style and ensuring that our publication met the highest standards of quality and integrity. We spent our weekends in our basement offices Bluebooking. We may not have realized it at the time, but by producing quality work we were building an institution that has legitimacy, that has power.

True change comes through collective efforts. In the labor movement and the civil rights movements and, later, in farmworkers, women's rights, and LGBT rights movements, we have seen how collective action can create profound, positive changes in legal and social norms. Since its inception, *Social Change* has been a quiet part of many of these struggles—it has been a forum in which academics and practitioners can share strategies, innovations, and ideas. *Social Change* is the result of the work of many contributors and stewards, united by shared values and common commitments. Again, while the creation and promotion of our journal did not, alone, bring about social justice, it would be a mistake not to recognize the full and varied roles that *Social Change* has played in helping us to get us where we are.

We no longer exist in the socio-political reality of 1969, the year of *Social Change*'s founding. Since then we have witnessed and weathered the profound post-Warren Court, post-Reagan changes to the practice and place of public interest law within the courts. Given recent changes in the presidential administration, Congress, and even the Supreme Court, we may have new opportunities for shaping the political context in which we operate in the coming years. Over the course of the next forty years, we can build on the movement of which we have been a part. Over the past forty years, many of us have toiled quietly and often outside the limelight. We have learned through trial and error. We may not have won every case we took on, we may not have enacted every policy we drafted, but we kept a piece of the movement alive and moving forward.

As we look forward and think about preserving and building on the foundations we have constructed, we must continue to be vigilant. While

4. I, of course, include in this term the countless other N.Y.U. law students who have worked on the journal and practitioners and academics who have published in it.

454 *N.Y.U. REVIEW OF LAW & SOCIAL CHANGE* [Vol. 34:425

we may have made some progress, we must never forget the important role we play in questioning and tempering the inevitable overreaches of power and balancing against interests that have historically wielded power. As we learn from the past, I believe this new role will better integrate the important pillars of political organizing, legislative advocacy, strategic legislation, and legal academia. Institutions like *Social Change* can play an important role in this—providing a forum for sharing ideas and strategies, questioning prevailing wisdom, and reminding us of the importance of bringing the ideas on the page to practice. As Cesar Chavez famously said, “We do not need perfect political systems; we need perfect participation.”⁵

5. RANDY SHAW, *BEYOND THE FIELDS: CESAR CHAVEZ, THE UFW, AND THE STRUGGLE FOR JUSTICE IN THE 21ST CENTURY* 220 (2008).